INDEX.

Subject Index.

	Page
Motion for leave to file statement as to jurisdiction	1
Statement as to jurisdiction	3
Exhibit "A"—Opinion of May 17, 1940 of the Supreme Court of the State of Minnesota	7
Exhibit "B"—Per curiam opinion of July 19, 1940 of the Supreme Court of the State of Minnesota	10

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 446

GOTTFRIED SCHMIDT, M. D.,

Appellant,

vs.

MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Appellee.

MOTION.

Now comes Ray E. Lane, Attorney for Gottfried Schmidt, appellant, and asks leave of court to file a typewritten statement as to jurisdiction out of time and prays that an order be entered herein granting said leave.

RAY E. LANE,
Attorney for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 446

GOTTFRIED SCHMIDT, M. D.,

Appellant,

vs.

MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Appellee.

STATEMENT AS TO JURISDICTION.

The appellee, Minnesota State Board of Medical Examiners, filed a citation signed by itself through its secretary with itself as a committee to be tried by itself as a committee. The Committee is a part of the administrative branch of the Government of the State of Minnesota, exercising without due process of law the function of the judicial branch of the Government of the State of Minnesota.

The appellee, in a citation filed by it, before it and heard by it, sought the revocation or suspension of the appellant's license to practice medicine in the State of Minnesota, and caused a hearing to be held before it in which the Board after the hearing on to-wit, the same day, December 16, 1938, entered an order sustaining it's citation and suspending appellant's license to practice medicine in the State of Minnesota for a period of five (5) years from that date.

Appellant appealed said cause to the District Court of the Second Judicial District of Ramsey County, Minnesota, assigning as error to-wit:

> "That the said Gottfried Schmidt was denied due process of law in violation of the Constitution of the State of Minnesota and in violation of the Fourteenth Amendment to the Constitution of the United States."
>
> "That the said Minnesota State Board of Medical Examiners could not conduct a fair and impartial hearing."
>
> "That the said Gottfried Schmidt, M.D. was compelled to be tried by his accusers who acted as prosecutor, judge and jury and that said procedure denied to the said Gottfried Schmidt the right of a fair and impartial trial guaranteed to him by the Constitution of the State of Minnesota and under the Fourteenth Amendment to the Constitution of the United States."

and said Court on to-wit, November 6, 1939 entered an order dismissing appellant's appeal.

Thereupon the appeal was prayed to the Supreme Court in the State of Minnesota, assigning as error, to-wit:

> "That the said Gottfried Schmidt was denied due process of law in violation of the Constitution of the State of Minnesota and in violation of the Fourteenth Amendment to the Constitution of the United States.
>
> "That the said Minnesota State Board of Medical Examiners could not conduct a fair and impartial hearing.
>
> "That the said Gottfried Schmidt, M.D., was compelled to be tried by his accusers who acted as prosecutor, judge and jury and that said procedure denied to the said Gottfried Schmidt the right of a fair and impartial trial guaranteed to him by the Constitution of the State of Minnesota and under the Fourteenth Amendment to the Constitution of the United States."

which Supreme Court on May 17, 1940 affirmed the order of dismissal of the said District Court and a petition for re-

hearing was denied on May 29, 1940. Subsequent thereto on the order of the Supreme Court of the State of Minnesota, the District Court of Ramsey County, Minnesota, on July 4, 1940, made and entered a judgment against the appellant suspending the license to practice medicine for a period of five (5) years.

Appellant thereupon appealed from the said judgment of suspension of the license to practice medicine in the State of Minnesota, to the Supreme Court of the State of Minnesota, which said Court on August 8, 1940 by its decision and judgment made and filed in said matter, affirmed the judgment of the District Court.

In said cause there was drawn the question of privileges and immunities of the appellant, a citizen of the State of Minnesota, and of the United States of America, on the ground that the procedure and hearing before the Minnesota State Board of Medical Examiners, appellee, was repugnant to the Fourteenth Amendment of the Constitution of the United States, and the decisions of the Courts of said State of Minnesota were in derogation of the said Fourteenth Amendment of the Constitution of the United States.

That by its decision, the Supreme Court of the State of Minnesota, deprives the appellant of his liberty and property without due process of law and denies the appellant the equal protection of the law.

That Section one (1) of the Fourteenth Amendment of the Constitution of the United States provides:

> Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of the law.

That the Supreme Court of the State of Minnesota, in and by its opinion finds that:

> "The argument that the action of the board was either in process or result a denial of due process or equal protection of law is without merit."

Therefore the finding of the Supreme Court of the State of Minnesota is in violation of and repugnant to Section One (1) of the Fourteenth Amendment of the Constitution of the United States.

RAY E. LANE,
Attorney for Appellant.

EXHIBIT "A".

No. 95

STONE, *J.:*

Endorsed: Filed May 17, 1940, Grace Kaercher Davis, Clerk, Minn. Supreme Court.

In re Revocation of the License of Gottfried Schmidt, M.D.

32405

MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,
Respondent,

vs.

GOTTFRIED SCHMIDT, M.D., *Appellant.*

Syllabus.

1. Uncontradicted evidence tending to show that a doctor's habitual method of diagnosis has no scientific basis and is a species of quackery, held sufficient to justify the board of medical examiners in suspending his license.

2. The hearing before the board was adjourned without taking the testimony of three witnesses for appellant. Because there was no showing, by offer of proof or otherwise, that the testimony would have been relevant to his methods of diagnosis, there was no prejudicial error in denying a continuance in order to take it.

Affirmed.

Opinion.

STONE, *Justice:*

Dr. Schmidt's license to practice medicine was suspended for a period of five years by the state board of medical examiners. There was an appeal to the district court of Ramsey County (Mason Minn. St. 1927, §5707). After hearing, the appeal was dismissed. Dr. Schmidt appeals.

We agree with the trial judge that the order of the board of medical examiners "was neither arbitrary, oppressive nor unreasonable, and that the evidence * * * afforded a reasonable and substantial basis for the order made by the Board suspending relator's license. * * *"

1. The statutes under which the board proceeded are Mason Minn. St. 1927, § 5707, et seq. Dr. Schmidt had twice been warned by the board before the formal charges which are the basis of this proceeding. The occasion of the latter was a complaint by one of his former patients. He was charged, as the statute provides, with having conducted himself in a manner unbecoming a person licensed to practice medicine in this state, with resulting detriment to the best interests of the public. There were other specifications of misconduct, but it is enough to consider the charge of improper and unprofessional diagnosis.

It was the practice of Dr. Schmidt to diagnosis a variety of human ailments by a method our description of which is based upon his own testimony. He would put a piece of wood pulp paper, moistened by the saliva of the patient, on the patient's abdomen. "Then we get a line on the person's abdomen." On the area so selected, the test paper would be placed. "Then, in testing the drugs, (i. e. in selecting the medicine), we put the drug in the patient's hand; left hand for female and right hand for male. And if that fits the person, that (some line on the abdomen) will do down deeper, three or four finger breadths deeper."

The doctor's theory, long and admittedly applied in his practice, was that in the manner stated there would be some reaction, apparent to him, resulting from placing the paper on the patient's abdomen. Thereby he could tell which of the bottles or boxed medicines held in the patient's hand would effect a cure, or, at least, which would be most likely to do so.

That is not all. The doctor frankly professes ability to make a fairly dependable diagnosis even though he does not examine or has never seen the patient. All he thinks he needs is the test paper, moistened on the patient's tongue. If that were sent him, as many were from absentee patients, he made the test on a "subject", that is, "on some other

person's abdomen." In such a case, the "subject" would hold the drug or drugs in his hand and the doctor would diagnose according to the reactions apparent to him.

At least in the case of absentee patients, of whom there were many, the invariable treatment consisted of pills or pellets, compounded of "sugar and milk". They had no other content. According to the doctor, their therapeutic potency came from "energy" with which he charged them from a machine and a certain "hook-up", the result being to make "this medicine". Needless to say, appellant made no attempt to justify his habitual methods of diagnosis or treatment on any scientific basis.

That is enough, we think, to show why no judge, or any number of them, could say, judicially or otherwise, that the action of the board was without abundant foundation in the evidence. It cannot be otherwise until the methods of the aboriginal medicine man, the witch doctor, and voodooism are demonstrated to be superior to those of modern science as applied in the field of medicine. The board of seven competent doctors adhered to the notion that the accomplishments of bio-chemistry and microscopy, with their diagnostic disclosures (which, in many cases, go to the point of demonstration) are superior to quackery, ancient and modern. It is just impossible for a court to disagree with them.

The argument that the action of the board was either in process or result a denial of due process or equal protection of law is without merit." See State ex rel. Powell *v.* State Medical Examining Board, 32 Minn. 324; State ex rel. Chapman *v.* State Board of Medical Examiners, 34 Minn. 389. We appreciate that appellant's attack is not on the law as such. It is rather and only on the action of the board in this case. The charge is the frequent one made against administrative boards, that they act both as prosecutors and judges. Enough answer for this case is that appellant was given ample notice of the nature of the charges against him, with an opportunity for hearing. He was heard at length in his own defense. Finally, the whole proceeding before the board is and has been subject to court review.

2. There is no merit in such argument as there is for appellant that the board denied him the privilege of adduc-

ing certain witnesses whose testimony was wanted. Ther were three of them. They had been present at the hearing but left before its conclusion. The board refused an ad journment in order to take their testimony, but they wer informed in substance what it would be. The absent wit nesses were all laymen whom appellant had treated successfully. He did not show, by offer of proof or otherwise, just what advantage he expected from their testimony. It is clear that it would not have gone at all to the main charge against him, that based on his diagnostic methods. They were so clearly bald quackery, and so much an imposition on his patients, that the testimony of three patients with whom he had had good luck would not have helped him.

Order affirmed.

EXHIBIT "B".

Ramsey County. Per Curiam.

Endorsed: Filed July 19, 1940. Grace Kaercher Davis, Clerk, Minn. Supreme Court.

In the Matter of the Revocation of the License of Gottfried Schmidt, M.D.

32653

THE MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,
Respondent,

vs.

GOTTFRIED SCHMIDT, M.D., *Appellant.*

Opinion.

Per CURIAM:

Appeal from a judgment. The case was here before and our opinion filed May 17, 1940. For the reasons given in the previous opinion and upon authority of that opinion, the judgment appealed from is Affirmed.

No. 446. SCHMIDT *v.* MINNESOTA STATE BOARD OF MEDICAL EXAMINERS. Appeal from the Supreme Court of Minnesota. November 12, 1940. *Per Curiam:* The motion for leave to file the statement as to jurisdiction

is granted. The appeal is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari, as required by § 237 (c) of the Judicial Code (43 Stat. 936, 938), certiorari is denied. *Mr. Ray E. Lane* for appellant. *Mr. John A. Weeks* for appellee. Reported below: 207 Minn. 526, 649; 292 N. W. 255.